UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER
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ART UNIT	PAPER NUMBER
3623	

DATE MAILED: 03/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

		Application No.	Applicant(s)
	Office Action Summary	09/849,621	DELURGIO ET AL.
		Examiner	Art Unit	
		Susanna M. Diaz	3623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on <u>09 January 2006</u>.
2a) ☒ This action is **FINAL**.   2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) <u>1-35</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) <u>1-35</u> is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on <u>09 January 2006</u> is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a) ☐ All   b) ☐ Some * c) ☐ None of:

      1. ☐ Certified copies of the priority documents have been received.

      2. ☐ Certified copies of the priority documents have been received in Application No. _____.

      3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>12/27/05;1/10/06</u>.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____ .

DETAILED ACTION

1.   This final Office action is responsive to Applicant's amendment filed January 9, 2006.

   Claims 1, 10, 19, 27, 32, and 35 have been amended.

   Claims 1-35 are pending.

2.   The previous objection to the drawings is withdrawn in response to Applicant's submission of replacement drawings.

   The previous objections to the specification are withdrawn in response to Applicant's amendments to the specification.

   The previous rejections under 35 U.S.C. § 112, 2nd paragraph are withdrawn in response to Applicant's claim amendments.

Terminal Disclaimer

3.   The terminal disclaimer filed on January 9, 2006 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of any patent granted on application no. 09/849,168 and U.S. Patent No. 6,553,352 has been reviewed and is accepted, thereby obviating the corresponding Double Patenting rejections. The terminal disclaimer has been recorded.

Response to Arguments

4.   Applicant's arguments with respect to claims 1-35 have been considered but are

moot in view of the new ground(s) of rejection.

Double Patenting

5.   The nonstatutory double patenting rejection is based on a judicially created
doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the
unjustified or improper timewise extension of the "right to exclude" granted by a patent
and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11
F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225
USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA
1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*,
418 F.2d 528, 163 USPQ 644 (CCPA 1969).
        A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be
used to overcome an actual or provisional rejection based on a nonstatutory double
patenting ground provided the conflicting application or patent is shown to be commonly
owned with this application. See 37 CFR 1.130(b).
        Effective January 1, 1994, a registered attorney or agent of record may sign a
terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with
37 CFR 3.73(b).

6.   <u>Claims 1-35</u> are provisionally rejected under the judicially created doctrine of

obviousness-type double patenting as being unpatentable over claims 18-26, 29, and

30 of co-pending application 09/849,448. This is a provisional double patenting

rejection since the conflicting claims have not been patented. The claims in the instant

application are fully disclosed by the subject matter recited in claims 18-26, 29, and 30

of co-pending application 09/849,448.

Claim Rejections - 35 USC § 102

7.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8.   Claims 1-7, 11-18, 32, and 33 are rejected under 35 U.S.C. 102(b) as being

anticipated by Cunningham et al. (U.S. Patent No. 6,029,139).

Cunningham discloses an apparatus for determining an optimum promotion plan

for merchandising of products for sale, comprising:

[Claim 1]   a scenario/results processor, configured to enable a user to prescribe an

optimization scenario, and configured to present the optimum promotion plan to said

user, wherein the optimum promotion plan is determined by execution of said

optimization scenario (col. 2, lines 24-28; col. 5, line 24 through col. 6, line 21 – Desired

sales volumes may be specified, which means that an estimated product demand is

utilized to assess an optimal promotion strategy), wherein said calculated activity based

costs include fixed and variable costs for the products for sale (col. 5, line 39; col. 6,

lines 1-21 – For example, there are fixed costs and incremental, or variable, costs);

a demand engine, couple to said scenario/results processor, configured to model

relationships between potential prices of the products and market demand for the

products, wherein said potential prices correspond to potential promotion events and

potential supplier offers (col. 5, lines 24-31; col. 6, lines 22-31);

an activity based cost engine, coupled to said demand engine, configured to

estimate demand chain costs for the products based upon said market demand,

wherein said demand chain costs include fixed and variable costs for the products for

sale (col. 5, line 39; col. 6, lines 1-21 – For example, there are fixed costs and

incremental, or variable, costs);

a promotion optimization engine, coupled to said demand engine and said

activity based cost engine, configured to employ said market demand and said demand

chain costs to determine the optimum promotion plan, wherein the optimum promotion

plan maximizes a merchandising performance figure of merits according to said

optimization scenario, and wherein the optimum promotion plan comprises a subset of

said promotion events and potential supplier offers (col. 2, lines 24-28; col. 5, line 24

through col. 6, line 21);

[Claim 2]   wherein said scenario/results processor comprises:

an input/output processor, configured to acquire data corresponding to said

optimization scenario from said user, and configured to distribute optimization results to

said user (col. 5, lines 24-57); and

a scenario controller, coupled to said input/output processor, configured to

control the acquisition of said data and the distribution of said optimization results in

accordance with a promotion plan optimization procedure (col. 5, lines 24-57);

[Claim 3]   wherein said data is acquired from said user over the Internet via a

packet-switched protocol (col. 2, lines 32-44 – NETSCAPE NAVIGATOR is an Internet

browser, which utilizes a packet-switched protocol);

[Claim 4]   wherein said packet-switched protocol comprises TCP/IP protocol (col. 2,

lines 32-44 – NETSCAPE NAVIGATOR is an Internet browser, which utilizes a packet-

switched and TCP/IP protocol);

[Claim 5]   wherein said data is interactively provided by and said optimization results

are interactively distributed to said user (col. 5, lines 24-57);

[Claim 6]   wherein said data is acquired from a source electronic file and said

optimization results are distributed to a destination electronic file, said electronic files

being designed by said user (col. 5, lines 31-40 – Input data may be pulled from a

database, thereby implying that the input data comes from an electronic source file.

The promotion plan is provided to a user as output. The promotion plan is based on

inputs defined by the user; col. 6, lines 38-40, 50-53);

[Claim 7]   wherein said input/output processor comprises:

        a template controller, configured to provide first promotion plan optimization

templates and second promotion plan optimization templates, wherein said promotion

plan optimization templates are presented to said user to allow for prescription of said

optimization scenario, and for distribution of said optimization results (col. 2, lines 38-44;

col. 5, lines 24-57 – By request of the browser-based optimization software, the user

inputs promotion-related details; col. 5, lines 59-60; col. 11, lines 29-41 – The output

from the optimization component is used to create a data model that is input into a

neural network for further optimization. Since the system knows how to interpret inputs

and outputs usefully and insert them properly into the various parts of the optimization

process, it is understood that templates are used to define what each piece of input and

output data represents. It should be noted that a template merely refers to a document

or file with a preset format); and

a command interpreter, configured to extract commands from said first promotion

plan optimization templates executed by said user, and configured to populate said

second promotion plan optimization templates according to result data provided for

presentation to said user (col. 2, lines 38-44; col. 5, lines 24-57 – By request of the

browser-based optimization software, the user inputs promotion-related details; col. 5,

lines 59-60; col. 11, lines 29-41 – The output from the optimization component is used

to create a data model that is input into a neural network for further optimization. Since

the system knows how to interpret inputs and outputs usefully and insert them properly

into the various parts of the optimization process, it is understood that templates are

used to define what each piece of input and output data represents. By using the output

of one process as input to another, it is understood that commands from the first

promotion plan optimization templates are extracted and configured to populate the

second promotion plan optimization templates. It should be noted that a template

merely refers to a document or file with a preset format);

[Claim 11]   wherein said first promotion plan optimization templates comprise:

a plurality of new scenario templates, configured to enable said user to prescribe

scenario parameters corresponding to said optimization scenario (col. 5, lines 53-57 –

Each scenario is customized to the user's inputs. It should be noted that a template

merely refers to a document or file with a preset format);

[Claim 12]   wherein said plurality of new scenario templates comprises:

a promotion event configuration template, for prescribing said potential promotion

events (col. 5, lines 24-57);

[Claim 13]   wherein said plurality of new scenario templates further comprises:

a supplier offer configuration template, for prescribing said potential supplier

offers (col. 5, lines 24-31 – A promotion strategy is optimized for a particular user, who

is a supplier of promoted items; col. 6, lines 22-31 – Plans for a specific product may be

recommended);

[Claim 14]   wherein said plurality of new scenario templates further comprises:

a promotion scenario configuration template, for associating said potential

promotion events to the products, wherein said promotion scenario configuration

template allows said user to specify a forward buy method, allowable potential supplier

offers, rules that constrain said optimization scenario, and store merchandising

capacities (col. 5, line 59 through col. 6, line 22 – The volume of a product sold or

predicted to be sold is representative of store merchandising capacities);

[Claim 15]   wherein said plurality of new scenario templates further comprises:

an optimization template, for specifying a promotion scenario and a time period

for which the optimum promotion plan is to be determined (col. 5, lines 24-57 – An

increase in promotion frequency may be recommended);

[Claim 16]   wherein said second promotion plan optimization templates comprise:

an optimization results template, for providing said user with said result data

corresponding to said optimization scenario (Fig. 2 – A final optimization result, e.g., a

promotion plan, is output);

[Claim 17]   wherein said result data comprises selected ones of said potential

promotion events and selected ones of said potential supplier offers (col. 5, line 25

through col. 6, line 31 -- The promotions may be suggested in relation to a price or

frequency of promotion. Promotions may also be specific to certain products that are

offered by identified manufacturers and retailers);

[Claim 18]   wherein said result data is presented graphically (Figs. 2, 3; col. 2, lines

32-44 -- A promotion plan is output to a user and the user communicates with the

system via a computer-based browser; therefore, it is understood that result data would

be presented graphically to the user).

[Claims 32-33]   Claims 32-33 recite limitations already addressed by the rejection

of claims 1-7 and 11-18 above; therefore, the same rejection applies. Furthermore,

Cunningham discloses, within a centralized data base, storing product attribute and

sales history data for a plurality of stores, wherein the product attribute and sales history

data correspond to the set of products (col. 2, line 65 through col. 5, line 10; col. 6, lines

50-56).

Claim Rejections - 35 USC § 103

9.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

10.   Claims 8-10, 19-28, 30, 31, 34, and 35 are rejected under 35 U.S.C. 103(a) as

being unpatentable over Cunningham et al. (U.S. Patent No. 6,029,139), as applied to

claims 1-7, 11-18, 32, and 33 above.

[Claims 8-10]   As per claims 8-10, Cunningham teaches use of a browser-based

interface for communications (col. 2, lines 38-44). While Cunningham does not

expressly teach that the related templates are provided according to hypertext markup

language (HTML) (claim 8), according to extensible markup language (XML) (claim 9),

or as applets (claim 10), the Examiner submits that it is old and well-known in the art of

programming browsers and related communication protocols to implement desired

functionality using hypertext markup language (HTML), extensible markup language

(XML), or applets. Each programming language/technique provides a different set of

benefits and is therefore selected for use by a programmer according to his/her needs

or programming skills. In order to make Cunningham adaptable to systems maintained

by programmers of varying programming needs and skills, the Examiner submits that it

would have been obvious to one of ordinary skill in the art at the time of Applicant's

invention to modify Cunningham to provide templates according to hypertext markup

language (HTML) (claim 8), according to extensible markup language (XML) (claim 9),

or as applets (claim 10).

[Claims 19-28, 30, 31]   Claims 19-28, 30, and 31 recite limitations already

addressed by the rejection of claims 1-18 above; therefore, the same rejection applies.

Furthermore, as per claims 19-28, 30, and 31, Cunningham does not expressly

teach that the templates are actively presented to the user in a sequential fashion (as

opposed to merely gathering required data from various processes/inputs/outputs in a

predefined format, which is taught by Cunningham). However, Official Notice is taken.

that it is old and well-known in the art of interactive modeling to present a user with

templates that are actively presented to the user in a sequential fashion to gather model

inputs. This sequential presentation of templates helps users better organize and more

efficiently input the appropriate modeling parameters. Since Cunningham teaches the.

basis concept of templates (or predefined formats) along with the use of an interactive

browser to glean promotion parameters from a user, the Examiner submits that it would

have been obvious to one of ordinary skill in the art at the time of Applicant's invention

to modify Cunningham to utilize templates that are actively presented to the user in a

sequential fashion to gather various promotion model parameters in order to help users

better organize and more efficiently input the appropriate modeling parameters.

[Claims 34-35]   Claims 34-35 recite limitations already addressed by the rejection

of claims 8 and 10 above; therefore, the same rejection applies.

Allowable Subject Matter

11.   Claim 29 would be allowable if rewritten or terminally disclaimed to overcome the

Double Patenting rejections, set forth in this Office action and to include all of the

limitations of the base claim and any intervening claims.

12.   The following is a statement of reasons for the indication of allowable subject

matter:

Cunningham (U.S. Patent No. 6,029,139) gathers required promotion model

parameters from various processes/inputs/outputs in a predefined format, which is

indicative of the use of templates. Cunningham does not expressly teach that the

templates are actively presented to the user in a sequential fashion. Official Notice has

been used to address the old and well-known concept of using interactive modeling to

present a user with templates that are actively presented to the user in a sequential

fashion to gather model inputs. Still, neither Cunningham nor the prior art of record

teaches or suggests the combination of presenting a user with a sequence of data entry

templates to enter the recited optimization scenario details, presenting optimum

promotion events and optimum supplier offers, and then performing the following steps

in the prescribed order: first providing a promotion event configuration template, for

prescribing potential promotion events; second providing a supplier offer configuration

template, for prescribing potential supplier offers; and third providing a promotion

scenario configuration template, for associating the potential promotion events to the

products, wherein said third providing comprises: specifying a forward buy method,'

enabling/disabling certain ones of the potential supplier offers, adding rules and

constraints to the optimization scenario, and indicating store merchandising capacities.

This combination of limitations is recited in claim 29; therefore, claim 29 is deemed to be

allowable over the prior art of record.

Conclusion

13.   The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Srinivasan et al. (US 2002/004273) – Discloses a method for dynamically optimizing promotions.

Boyd et al. (US 2002/0123930) – Discloses a promotion pricing system.

Smith et al. ("A Discrete Optimization Model for Seasonal Merchandise Planning") -- Discloses an optimization model for formulating optimal promotion plans.

The following references disclose details of Spotlight Solutions' and ShopKo's markdown optimization software, which includes the ability to customize product markdown approaches at each retail location:

Barth ("ShopKo Holds the Price Line")

"Essentus and Spotlight Solutions Partnership Delivers Precise Markdown Decisions"

The following references disclose various types of price optimization software, including software that takes product demand and promotions into account:

"Manugistics Agrees to Acquire Talus Solutions"

"Goodyear Implements Trilogy's MultiChannel Pricing Solution as Its Enterprise-Wide E-Pricer Platform"

"IMRglobal Signs New Product Implementation Agreement with Retek to Improve Retail Pricing and Markdown Process"

The following references disclose various details of KhiMetrics, Inc.'s pricing products:

"New Tools for Modeling Elasticity, Optimizing Prices and Collecting Live Pricing from the Web to Debut at Retail Systems 2000 in Chicago"

"KhiMetrics and Retek Form Marketing Alliance for Comprehensive Retail Pricing Solution"

"KhiMetrics Helps Retailers Increase Margins With Two New Tools for Their Retail Revenue Management Application Suite"

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

15.   Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susanna M. Diaz whose telephone number is (571) 272-6733. The examiner can normally be reached on Monday-Friday, 10 am - 6 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on (571) 272-6729. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Susanna M. Diaz
Primary Examiner
Art Unit 3623

March 17, 2006